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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,281	06/09/2006	Rob Beltman	F7745(V)	2927
201 7590 09/01/2009 UNILEVER PATENT GROUP 800 SYLVAN AVENUE AG West S. Wing ENGLEWOOD CLIFFS, NJ 07632-3100				
EXAMINER PADEN, CAROLYN A				
ART UNIT		PAPER NUMBER		
1794				
NOTIFICATION DATE		DELIVERY MODE		
09/01/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentgroupus@unilever.com

Office Action Summary

Application No.

10/582,281

Applicant(s)

BELTMAN ET AL.

Examiner

Carolyn A. Paden

Art Unit

1794

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SE-08)
Paper No(s)/Mail Date 9-5-06; 8-16-06
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claims 4 and 11-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear as to what particle size was intended in claim 4, 0.1mm or .04mm. An amendment to the claims cancelling one size or the other would overcome the rejection.

It is unclear in claim 11 as to what process step is contemplated since the claims merely call for being involved. An amendment to the claim clarifying this issue would overcome the rejection. Claims 12-17 use the passive voice and it is unclear as to what process steps are intended to be included in the process. An amendment to the claim clarifying this issue would overcome the rejection.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pardums (3,245,802).

Pardums discloses washing soybeans and then drying them in a vacuum. The soybeans were then ground to pass a 50 mesh sieve. It is the examiners understanding that a 50 mesh screen would include a screen size of about .297 mm. Then the soybean powder was extracted with alcohol and then hexane to remove substantially all of the oil in the product (column 2, lines 25-41. Then margarine was made that contained the treated soy flour. The soybean flour was used in amounts shown at column 3, Table 1. Table II shows that the addition of soy flour improves the anti-spattering properties of margarine. The claims appear to differ from Pardums in the recitation that the margarine is a water in oil emulsion. Given the fact that Pardums only contains 19.8% water, one of ordinary skill in the art would expect the margarine to be a water in oil emulsion. IT is appreciated that particle sizes of .1 mm and .04 mm are not mentioned but one of ordinary skill in the art could further grind the soy flour of Pardums to create finer flour.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over van Buren (6,942,890).

Van Buren discloses fortifying olive oil with olive kernel. The resulting olive oil may then be used in spreads, salad dressing, mayonnaise or

saucers and in food compositions with a substantial amount of fat emulsified with a water phase (column 5, lines 24-30). These emulsions are taken to be water in oil emulsions. The olive oil is said to be flavored by the olive kernel. In example 1 the olive kernel is chopped to a particle size of 100um. The extent of olive kernel added is shown in Table 1 to fall within the range of the claims. The claims appear to differ in the use of the flavored oil in an emulsion but it is clear from the applications described in column 5, lines 24-30 that the use of the kernel-flavored oil in water in oil emulsion would have been an obvious use for the product. It is appreciated that van Buren does not mentioned the inclusion of milled sunflower seeds or linseeds or soybeans or nuts. But it would have been obvious to one of ordinary skill in the art to include milled seeds or nuts in the oil of van Buren to flavor the oil and provide variety to the taste of oil. It is appreciated that the spattering behavior is not mentioned but this property would have been the natural result of the preparation of the van Buren product.

Claims 1, 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sipila (2003/0165607).

Sipila discloses a food emulsion containing linseed press residue (see abstract). The food composition contains linseed oil and water in amounts that would lead one to believe that the composition would include a water in oil emulsion. The claims appear to differ from Sipila in the recitation of the particle size of the linseed press residue. The addition of linseed hulls is also contemplated at paragraph 0020. It would have been obvious to one of ordinary skill in the art to adjust the particle size of the linseed press and hull materials in order to provide a healthful foodstuff with a smooth taste. It is appreciated that the anti-spattering property of the product is not mentioned but this property would have been the natural result of the preparation of the Sipila product.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached by dialing 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1794